

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**HACIENDA MOTORS LTD D/B/A MERCEDES
BENZ OF PLEASANTON**

Employer

and

Case 32-RD-153575

JUSTIN ACOSTA

Petitioner

and

**EAST BAY AUTOMOTIVE MACHINISTS
LODGE NO. 1546, DISTRICT LODGE 190**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds¹:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.²
3. The incumbent Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

¹ The East Bay Automotive Machinists Lodge No. 1546, District Lodge 190 did not appear at the hearing. The record establishes that the Union was properly served with the Petition and Notice of Representation Hearing in this matter. No request for postponement was received. No party filed a brief in this matter.

² The Employer is a California corporation with a facility in Pleasanton, California, and is engaged in the business of selling and servicing automobiles. Within the past 12 months, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5,000, which originated from points outside the State of California.

5. Pursuant to Section 102.63(b)(1) of the Board's Rules and Regulations, prior to the hearing in this matter, the Employer submitted a Statement of Position. The Employer's Statement of Position shows that the Employer purportedly does not contest the appropriateness of the unit sought by Petitioner. However, a careful review of the Employer's Statement of Position reveals that the Employer is arguing that tech trainees should be included in the unit.

On May 23, 2014, the Region issued a Certification of Representative certifying the Union as the collective-bargaining representative of the employees in the following appropriate unit:

"All full-time and regular part-time technicians employed by the Employer at its Pleasanton, California facility; excluding all managerial and administrative employees, service writers, parts employees, salespersons, office clerical employees, guards, and supervisors as defined in the Act."

The petition was filed on June 4, 2015, and includes a petitioned-for unit coexistent with the certified unit.

Thereafter, the parties engaged in collective bargaining. Unchallenged evidence presented at hearing, including sworn testimony and documentary evidence such as bargaining proposals, indicate that during bargaining the parties tentatively agreed to include tech trainees in the bargaining unit; however, this tentative agreement was not embodied in a final signed agreement. Based on the above, I conclude that the evidence in the record is insufficient to establish that tech trainees should be included in or excluded from the bargaining unit.

The eligibility issues implicates a total of 3 individuals, compared to 26 employees whom are clearly included in the in the unit.

Because the Employer's Statement of Position raises eligibility issues affecting at approximately 10 percent of the unit, I conclude that the Employer's contentions do not significantly change the size or character of the unit and thus are not relevant to a question concerning representation.

Therefore, consistent with Section 102.64 of the Board's Rules and Regulations, I direct an election in this matter, and I further order that the tech trainees may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

In view of the foregoing and the record as a whole, I find the following employees constitute an appropriate unit for collective bargaining:

Included: All full-time and regular part-time technicians employed by the Employer at the Employer's Pleasanton, California facility.

Excluded: All managerial and administrative employees, service writers, parts employees, salespersons, office clerical employees, guards, and supervisors as defined in the Act.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether tech trainees are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

A. Election Details

The National Labor Relations Board will conduct a secret manual ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Union.

The election will be held on January 25, 2018 from 11:00 AM to 11:30 AM at the Facility.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 2, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses,

available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **January 12, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to

the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: January 10, 2018

/s/ Valerie Hardy-Mahoney

VALERIE HARDY-MAHONEY
REGIONAL DIRECTOR
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